

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

M e m o r a n d u m

**Date:** April 4, 2005

**To:** The Commission  
(Meeting of April 7, 2005)

**From:** Delaney L. Hunter, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** H.R. 359 and Other Liquefied Natural Gas Bills Proposed in  
Congress

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION:** Support liquefied natural gas (LNG) legislation with concurrent federal/state jurisdiction over LNG terminals. Oppose LNG legislation, which provides FERC with disproportionate or exclusive control.

**SUMMARY:** H.R. 359 would give FERC jurisdiction over LNG import terminals, but would preclude FERC from imposing certain conditions in an order, such as open access, third party access or rate conditions.

Energy Policy Act of 2005 (EPAAct) was released on Friday, March 31, 2005, which has 16 Titles. Title III Oil and Gas, Section 320 contains provisions similar to H.R. 359 and appears to supersede it. A summary of the 16 Titles, which was released by the House Energy and Commerce Committee, is attached hereto.

**DIGEST:** The LNG provision in Title III, Section 320, would amend the Natural Gas Act to provide authorization for FERC over LNG import terminals, as well as FERC control over administrative records and schedules for all related federal and state administrative proceedings. It provides for judicial review of related state and federal proceedings, including delays in proceedings, only in the U.S. Court of Appeals for the D.C. Circuit. It would prohibit FERC from regulating rates or terms of service, such as requiring open access.

There will undoubtedly be bills on LNG introduced in the United States Senate in the near future. For example, on Wednesday, April 6, 2005, Senator Alexander is scheduled to introduce a bill on natural gas. Senator Feinstein has announced her intent to sponsor a bill on concurrent federal/state jurisdiction over LNG import terminals. Senator Reed has introduced a bill prohibiting preemption of state government on LNG siting issues.

## **DIVISION ANALYSIS:**

## **RECOMMENDED AMENDMENTS:**

**STATUS:** The House Energy and Commerce Committee will begin markup on the EPAct on Tuesday, April 5, 2005. Under an aggressive schedule, it is possible that the Committee will finish markup and vote on the EPAct by the end of the week of April 4, 2005 or the following week. Therefore, under such a schedule, it could be on the House Floor for a vote sometime this month. Of course, there are many variables, which could affect the schedule.

It is not possible to predict how quickly the Senate will act on energy legislation at this time.

## **SUPPORT/OPPOSITION**

Support: LNG legislation, which provides for concurrent federal/state authority over LNG terminals, such as the one Senator Feinstein has announced that she will introduce.

Opposition: EPAct, H.R. 359, or similar legislation, which provide FERC with disproportionate or exclusive control.

## **LEGISLATIVE STAFF CONTACT**

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**Date:** April 4, 2005

**SUMMARY OF CHANGES FROM ENERGY POLICY ACT OF 2005**  
**DISCUSSION DRAFT TO COMMITTEE PRINT**

**TITLE I – ENERGY EFFICIENCY**

**Sec. 105**, the cap was raised from \$300,000,000 to \$500,000,000 by taking the money from **Sec. 106**, which was deleted. The number of contracts allowed was increased from 60 to 100. Additional language was added to ensure compliance with the caps. Two effective dates were changed to October 1, 2006. **Sec. 133**, six dates for the commencement of energy efficiency requirements for certain products was moved up from January 1, 2007 to January 1, 2006.

**TITLE II – RENEWABLE ENERGY**

New **Sec. 208**, the “Renewable Energy Security Act”, provides financial assistance programs for weatherization and various renewable energy systems installed in residences. A DOE rebate program is established for renewable energy systems installed in homes or small businesses.

**TITLE III – OIL AND GAS**

**Sec. 320**, the LNG provision, requires an order from the FERC before any liquefaction or gasification natural gas terminal may be constructed, expanded or operated. Designates FERC as the lead agency for coordinating all Federal authorizations and requires FERC to establish a schedule for all proceedings required under Federal law to construct, expand or operate any such terminal. Requires FERC to maintain a consolidated administrative record for use in any administrative appeal or judicial review. Requires consultation with the State in the area of State and local safety. Prohibits FERC from regulating rates, charges, terms, or conditions of service of any terminal approved before January 1, 2011, such prohibition subject to a January 1, 2021 expiration. Grants the U.S. Court of Appeals for the District of Columbia exclusive jurisdiction for review.

**Sec. 350** clarifies the ongoing responsibilities of federal agencies in designating energy facilities and corridors on Federal land.

New **Title III, Subtitle D**, “The Refinery Revitalization Act” designates certain areas as refinery revitalization zones based on an areas refining or manufacturing experience and current unemployment rate. Requires an MOU between DOE Secretary and EPA Administrator to encourage expansion of refining capacity. Designates DOE as lead federal agency for coordinating all federal authorizations. Provides an accelerated review and approval process for new refinery facilities in a refinery revitalization zone. Provides qualifying states federal permitting legal and technical assistance.

**TITLE IV – COAL**

**Sec. 414** authorizes loan guarantees for 5 petroleum coke gasification projects. Petroleum coke is a byproduct of the refining process that can be used as a low cost alternative feedstock for IGCC power plants. **Sec. 441** increases funding level to \$2.5

billion generation projects under the Clean Air Coal Program. Generation projects may include gasification combined cycle, gasification fuel cells, gasification co-production, and ultra-supercritical boilers.

#### **TITLE V – INDIAN ENERGY**

This title was deleted.

#### **TITLE VI – NUCLEAR MATTERS**

**Secs. 627, 634, 635 and 638** were added to existing statutes. New **Sec. 612** provides for nuclear contractor, subcontractor and supplier financial accountability.

#### **TITLE VII – VEHICLES AND FUELS**

New **Sec. 712** creates a competitive grant program to foster innovation, production and use of hybrid retrofit and electric conversion technologies on conventional internal combustion vehicles.

#### **TITLE VIII – HYDROGEN**

No changes were made in this title.

#### **TITLE IX – RESEARCH AND DEVELOPMENT**

The changes in Title IX drops with, certain exceptions, provisions and language that might be construed as involving energy, research, development demonstration, and related projects. Several provisions are modified to change the focus to studies and program support rather than energy research, development, or demonstration

#### **TITLE X – DEPARTMENT OF ENERGY MANAGEMENT**

No changes were made to this title.

#### **TITLE XI – PERSONNEL AND TRAINING**

This title was deleted.

#### **TITLE XII – ELECTRICITY**

**Sec. 1211** was modified to allow New York to set higher reliability standards as long as other States' reliability is not compromised.

#### **TITLE XIII – ENERGY TAX INCENTIVES**

This title was deleted.

#### **TITLE XIV – MISCELLANEOUS**

New **Sec. 1446** clarifies that vegetable oil made from soybeans and used in electric transformers as thermal insulation shall not be regulated as oil as defined under the Edible Oil Regulatory Reform Act. New **Sec. 1447** provides that Federal agencies conducting assessments of risk to human health and the environment from energy-related

activities use sound and objective scientific practices, consider the best available science, and describe the weight of the scientific evidence concerning such risks.

## **TITLE XV – ETHANOL AND MOTOR FUELS**

New **Sec. 1541**, Boutique Fuels, establishes and limits the number of “boutique fuels” and allows replacement of older fuels with new, clean fuels. Allows the EPA Administrator, in consultation with the DOE Secretary, to temporarily waive requirements during extreme fuel supply emergencies. Future approved fuels cannot increase the total number of fuels approved and implemented as of September 1, 2004, however the Administrator may approve a new fuel provided the total number of fuels is not increased. The approval of a new fuel must not cause fuel supply interruptions or a significant adverse impact on the ability to produce a fuel. The Administrator shall remove a fuel from the list under specified circumstances but shall not reduce the total number of fuels authorized. No fuel shall be approved in a State’s implementation plan unless that fuel was approved and fully implemented in at least one State in the State’s Petroleum Administration for Defense District (PADD).

The study provision requires the Administrator and the DOE Secretary to study jointly and report to Congress the effects on air quality, the number of fuel blends, fuel fungibility, and fuel costs of SIPs adopted pursuant to the Clean Air Act. The study seeks to determine the development of a Federal fuels system and recommend to Congress legislative changes as are necessary to implement such a system.

## **TITLE XVI – STUDIES**

Studies on natural gas supply shortages (**Sec. 1602**), split – estate oil and gas leasing practices (**Sec. 1603**) and the Powder River Basin (**Sec. 1604**) were dropped.